

**International Money Laundering Abatement and Financial
Anti-Terrorism Act of 2001**

Title III of the USA Patriot Act of 2001

Public Law 107-56

Date of Enactment: October 26th 2001

Section by Section Summary

(Source: Congressional Record October 25, 2001)

Section 301. Short title and table of contents

Section 302. Findings and purposes

Section 303. 4-Year congressional review-expedited consideration

Section 303 provides that the provisions added and amendments made by Title III will terminate after **September 30, 2004**, if the Congress enacts a joint resolution to that effect, and that any such joint resolution will be considered by the Congress expeditiously.

**SUBTITLE A. INTERNATIONAL COUNTER-MONEY LAUNDERING AND
RELATED MATTERS**

Section 311. Special measures for jurisdictions, financial institutions, or international transactions or accounts of primary money laundering concern

Section 311 adds a new section 31 U.S.C. 5318A, entitled ``Special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern," to the Bank Secrecy Act. The new section gives the Secretary of the Treasury, in consultation with other senior government officials, authority (in the Secretary's discretion), to impose one or more of five new ``special measures" against foreign jurisdictions, foreign financial institutions, transactions involving such jurisdictions or institutions or one more types of accounts, that the Secretary, after consultation with Secretary of State and the Attorney General, determines to pose a ``primary money laundering concern" to the United States.

The special measures include:

- (1) requiring additional recordkeeping or reporting for particular transactions,
- (2) requiring the identification of the foreign beneficial owners of certain accounts at a U.S. financial institution,
- (3) requiring the identification of customers of a foreign bank who use an interbank payable-through account opened by that foreign bank at a U.S. bank,
- (4) requiring the identification of customers of a foreign bank who use an interbank correspondent account opened by that foreign bank at a U.S. bank, and

- (5) after consultation with the Secretary of State, the Attorney General, and the Chairman of the Federal Reserve Board, restricting or prohibiting the opening or maintaining of certain interbank correspondent or payable through accounts.

Measures 1-4 may not be imposed for more than 120 days except by regulation, and measure 5 may only be imposed by regulation.

Section 312. Special due diligence for correspondent accounts and private banking accounts

Section 312(a) of the Act adds a new subsection (1), entitled ``Due Diligence for United States Private Banking and Correspondent Banking Accounts Involving Foreign Persons," to 31 U.S.C. 5318. The new subsection requires a U.S. financial institution that maintains a correspondent account or private banking account for a non-United States person (or that person's representative) to establish appropriate, specific, and, where necessary, enhanced due diligence procedures that are reasonably designed to detect and report instances of money laundering through such accounts. For this purpose, a correspondent account is defined in the new section 5318A, added to the Bank Secrecy Act by section 311 of Title III.

The general requirement is supplemented by two additional, more specific, due diligence standards that are required for certain types of correspondent and private banking accounts.

Correspondent Accounts--In the case of certain correspondent accounts, the additional standards required by subsection 5318(i)(2) require a U.S. financial institution to, at a minimum, do three things: (1) Ascertain the identity, and the nature and extent of the ownership interests, of the owners of any foreign bank correspondent whose shares are not publicly traded. (2) Conduct enhanced scrutiny of the correspondent account to guard against money laundering and satisfy its obligation to report suspicious transactions under the terms of 31 U.S.C. 5318(g). (3) Ascertain whether any foreign bank correspondent in turn provides correspondent accounts to third party foreign banks; if so the U.S. financial institution must ascertain the identity of those third party foreign banks and related due diligence information required under the general rules of paragraph 5318(i)(1).

These additional standards apply to correspondent accounts requested or maintained by or on behalf of any foreign bank operating under (i) an offshore banking license (defined by the statute as a banking license that bars the licensee from conducting banking activities with citizens of, or in the local currency of, the jurisdiction that issued the license), or (ii) under a banking license issued (A) by any country designated as noncooperative with international anti-money laundering principles by an intergovernmental body of which the United States is a member, with the concurrence of the U.S. representative to such body, or (B) by a country that has been designated by the Secretary of the Treasury as warranting special measures (See section 311 of Title III), due to money laundering concerns.

Private Banking Accounts--In the case of private banking accounts, a U.S. financial institution must comply at a minimum, with the following requirements of subsection 5318(i)(3): (1) The U.S. financial institution must take reasonable steps to ascertain the identity of the nominal and beneficial owners of the account and the source of funds deposited into the account, as needed to guard against money laundering and report any suspicious transactions under the terms of 31 U.S.C. 5318(g). (2) The U.S. financial institution must take reasonable steps to conduct enhanced scrutiny, that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption, for any private banking account that is requested or maintained by, or on behalf of, a senior foreign political figure (or any immediate family member or close associate of such a political figure).

A private banking account for this purpose is any account or combination of accounts that requires a minimum aggregate deposit of at least \$1 million, is established on behalf of one or more individuals who have either a direct or beneficial ownership interest in the account, and that is assigned to, or administered or managed by, in whole or in part, an officer, employee or agent of a financial institution who serves as liaison between the institution and the account's direct or beneficial owner or owners.

Effective Date for Regulations--31 U.S.C. 5318(i) will take effect on **July 23, 2002**, 270 days after the date of enactment, and will apply to otherwise covered correspondent and private banking accounts, whether opened before, on, or after the date of enactment. Section 312(b) of Title III requires the Secretary of the Treasury, in consultation with the appropriate federal functional regulators of the affected financial institutions, issue regulations delineating the due diligence policies, procedures, and controls required under new subsection 5318(i), not later than **April 24, 2002**, 180 days after the date of enactment. However, the new subsection will take effect whether or not final regulations are issued before the 270th day following enactment, and any failure to issue regulations whether before or after the effective date is in no way to affect the enforceability of subsection 5318(i).

Section 313. Prohibition on United States correspondent accounts with foreign shell banks

Section 313(a) of the Act adds a new subsection (j), entitled ``Prohibition on United States Correspondent Accounts with Foreign Shell Banks" to 31 U.S.C. 5318. The new subsection bars any depository institution or registered broker-dealer in securities, operating in the United States, from establishing, maintaining, administering, or managing a correspondent account in the United States for a foreign bank, if the foreign bank does not have ``a physical presence in any country." The subsection also includes a requirement that any financial institution covered by the subsection must take reasonable steps (as delineated by Treasury regulations) to ensure that it is not providing the prohibited services indirectly to a ``no-physical presence bank," through a third party foreign bank correspondent of the U.S. institution. The prohibition does not apply, however, to a correspondent account provided by a U.S. institution to a foreign ``no physical presence" bank if that foreign bank is an affiliate of a depository institution (including a credit union or foreign bank) that does have

a physical presence in some country and if the foreign shell bank is subject to supervision by a banking authority that regulates its ``physical presence" affiliate in that country. Both the terms ``affiliate" and ``physical presence" are defined in the new subsection.

Section 313(b) provides that the ban on provision of correspondent accounts for “no physical presence” banks will take effect **December 25, 2001**, the end of the 60 day period after the date of enactment.

Section 314. Cooperative efforts to deter money laundering

Section 314 requires the Secretary of the Treasury to issue regulations, within 120 days of the date of enactment (**February 23, 2002**), to encourage cooperation among financial institutions, financial regulators and law enforcement officials, and to permit the sharing of information by law enforcement and regulatory authorities with such institutions regarding persons reasonably suspected, based on credible evidence, of engaging in terrorist acts or money laundering activities.

Section 314 also allows (with notice to the Secretary of the Treasury) the sharing of information among banks involving possible terrorist or money laundering activity, and requires the Secretary of the Treasury to publish, at least semiannually, a report containing a detailed analysis of patterns of suspicious activity and other appropriate investigative insights derived from suspicious activity reports and law enforcement investigations.

Section 315. Inclusion of foreign corruption offenses as money laundering crimes

Section 315 amends 18 U.S.C. 1956 to include foreign corruption offenses, certain U.S. export control violations, certain customs and firearm offenses, certain computer fraud offenses, and felony violations of the Foreign Agents Registration Act of 1938, to the list of crimes that constitute ``specified unlawful activities" for purposes of the criminal money laundering provisions.

Section 316. Anti-terrorist forfeiture protection

Section 316 establishes procedures to protect the rights of persons whose property may be subject to confiscation in the exercise of the government's anti-terrorism authority.

Section 317. Long-arm jurisdiction over foreign money launderers

Section 317 amends 18 U.S.C. 1956 to give United States courts ``long-arm" jurisdiction over foreign persons committing money laundering offenses in the United States, over foreign banks opening U.S. bank accounts, and over foreign persons who convert assets ordered forfeited by a U.S. court. The amendments made by section 317 also permit a federal court dealing with such foreign persons to issue a pre-trial restraining order or take other action necessary to preserve property in the United States to satisfy an ultimate judgment. Finally, the amendment also permits the appointment by a federal court of a

receiver to collect and take custody of a defendant's assets to satisfy criminal or civil money laundering or forfeiture judgments.

Section 318. Laundering money through a foreign bank

Section 318 expands the definition of financial institution for purposes of 18 U.S.C. 1956 and 1957 (U.S. Criminal Code dealing with Money Laundering) to include banks operating outside of the United States.

Section 319. Forfeiture of funds in United States interbank accounts

Section 319 contains a number of provisions that are designed to deal with practical issues raised by money laundering control and financial transparency, relating primarily to correspondent accounts at U.S. financial institutions.

First, section 319 amends 18 U.S.C. 981 to treat amounts deposited by foreign banks in interbank accounts with U.S. banks as having been deposited in the United States for purposes of the forfeiture rules, but grants the Attorney General authority, in the interest of justice and consistent with the United States' national interest, to suspend a forfeiture proceeding that is otherwise based on the "U.S. deposit" presumption.

Second, section 319 adds a new subsection (k) to 31 U.S.C. 5318 to require U.S. financial institutions to reply to a request for information from a U.S. regulator relating to anti-money laundering compliance within 120 hours of receipt of such a request, and to require foreign banks that maintain correspondent accounts in the United States to appoint agents for service of process within the United States; the new 31 U.S.C. 5318(k) authorizes the Attorney General and the Secretary of the Treasury to issue a summons or subpoena to any such foreign bank seeking records, wherever located, relating to such a correspondent account. In addition, the provision requires the U.S. depository institution or broker-dealer that maintains the account to sever correspondent arrangements with any foreign bank within 10 days of notification by the Attorney General or the Secretary of the Treasury (each after consultation with the other) that the foreign bank has neither complied with nor contested any such summons or subpoena.

Finally, Section 319 amends section 413 of the Controlled Substances Act to authorize United States courts to order a convicted criminal to return property located abroad and to order a civil forfeiture defendant to return property located abroad pending trial on the merits.

Section 320. Proceeds of foreign crimes

Section 320 amends 18 U.S.C. 981 to permit the United States to institute forfeiture proceedings against the proceeds of foreign criminal offenses found in the United States.

Section 321. Financial institutions specified in subchapter II of chapter 53 of Title 31, United States Code

Section 321 amends 31 U.S.C. 5312(2) to add credit unions, futures commission merchants, commodity trading advisors, and registered commodity pool operators to the definition of "financial institution" for purposes of the Bank Secrecy Act, and to include the Commodity Futures Trading Commission within the term "federal functional regulator" for purposes of the Bank Secrecy Act.

Section 322. Corporation represented by a fugitive

Section 322 extends the existing prohibition, in 18 U.S.C. 2466, against the maintenance of a forfeiture proceeding on behalf of a fugitive to include a proceeding by a corporation whose majority shareholder is a fugitive and a proceeding in which the corporation's claim is instituted by a fugitive.

Section 323. Enforcement of foreign judgments

Section 323 permits the government to seek a restraining order to preserve the availability of property subject to a foreign forfeiture or confiscation judgment.

Section 324. Report and recommendation

Section 324 directs the Secretary of the Treasury, in consultation with the Attorney General, the Federal banking agencies, the SEC, and other appropriate agencies to evaluate operation of the provisions of Subtitle A of Title III of the Act and recommend to Congress any relevant legislative action, within 30 months of the date of enactment (**April 2004**).

Section 325. Concentration accounts at financial institutions

Section 325 amends 31 U.S.C. 5318(h) to authorize the Secretary of the Treasury to issue regulations concerning the maintenance of concentration accounts by U.S. depository institutions, to prevent an institution's customers from anonymously directing funds into or through such accounts.

Section 326. Verification of identification

Sec. 326(a) adds a new subsection (l) to 31 U.S.C. 5318 to require the Secretary of the Treasury to prescribe by regulation, jointly with each federal functional regulator, minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution. The minimum standards shall require financial institutions to implement, and customers (after being given adequate notice) to comply with, reasonable procedures concerning verification of customer identity, maintenance of records of identity verification, and consultation at account opening of lists of known or suspected terrorists

provided to the financial institution by a government agency. The required regulations are to be issued within one year of the date of enactment (**October 26, 2002**).

Section 326(b) requires the Secretary of the Treasury, again in consultation with the federal functional regulators (as well as other appropriate agencies), to submit a report to Congress within six months of the date of enactment (**April 2002**) containing recommendations about the most effective way to require foreign nationals to provide financial institutions in the United States with accurate identity information, comparable to that required to be provided by U.S. nationals, and to obtain an identification number that would function similarly to a U.S. national's tax identification number.

Section 327. Consideration of anti-money laundering record

Section 327 amends section 3(c) of the Bank Holding Company Act of 1956, and section 18(c) of the Federal Deposit Insurance Act to require the Federal Reserve Board and the Federal Deposit Insurance Corporation, respectively, to consider the effectiveness of a bank holding company or bank (within the jurisdiction of the appropriate agency) in combating money laundering activities, including in overseas branches, in ruling on any merger or similar application by the bank or bank holding company.

Section 328. International cooperation on identification of originators of wire transfers

Section 328 requires the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to take all reasonable steps to encourage governments to require the inclusion of the name of the originator in wire transfer instructions sent to the United States, and to report annually to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs concerning progress toward that goal.

Section 329. Criminal penalties

Section 329 provides criminal penalties for officials who violate their trust in connection with the administration of Title III.

Section 330. International cooperation in investigations of money laundering, financial crimes, and the finances of terrorist groups

Section 330 states the sense of the Congress that the President should direct the Secretary of State, the Attorney General, or the Secretary of the Treasury, as appropriate and in consultation with the Federal Reserve Board, to seek negotiations with foreign financial supervisory agencies and other foreign officials, to ensure that foreign financial institutions maintain adequate records relating to any foreign terrorist organization or its membership, or any person engaged in money laundering or other financial crimes, and make such records available to U.S. law enforcement and financial supervisory personnel when appropriate.

SUBTITLE B. BANK SECRECY ACT AMENDMENTS AND RELATED IMPROVEMENTS

Section 351. Amendments relating to reporting of suspicious activities

Section 351 restates 31 U.S.C. 5318(g)(3) to clarify the terms of the safe harbor from civil liability for financial institutions filing suspicious activity reports pursuant to 31 U.S.C. 5318(g). The amendments to paragraph (g)(3) also create a safe harbor from civil liability for banks that provide information in employment references sought by other banks pursuant to the amendment to the Federal Deposit Insurance Act made by Section 355 of Title III.

Section 352. Anti-money laundering programs

Section 352 amends 31 U.S.C. 5318(h) to require financial institutions to establish anti-money laundering programs and grants the Secretary of the Treasury authority to set minimum standards for such programs. The anti-money laundering program requirement takes effect **April 24, 2002**, 180 days after the date of enactment. The Secretary of the Treasury is also to prescribe regulations before **April 24, 2002** that consider the extent to which the requirements imposed under amended section 5318(h) are commensurate with the size, location, and activities of the financial institutions to which the regulations apply.

Section 353. Penalties for violations of geographic targeting orders and certain recordkeeping requirements, and lengthening effective period of geographic targeting orders

Section 353 amends 31 U.S.C. 5321, 5322, and 5324 to clarify that penalties for violation of the Bank Secrecy Act and its implementing regulations also apply to violations of Geographic Targeting orders issued under 31 U.S.C. 5326, and to certain recordkeeping requirements relating to funds transfers. Section 353 also amends 31 U.S.C. 5326 to make the period of a geographic target order 180 days.

Section 354. Anti-money laundering strategy

Section 354 amends 31 U.S.C. 5341(b) to add "money laundering related to terrorist funding" to the list of subjects to be dealt with in the annual National Money Laundering Strategy prepared by the Secretary of the Treasury pursuant to the Money Laundering and Financial Crimes Strategy Act of 1998.

Section 355. Authorization to include suspicions of illegal activity in written employment references

Section 355 amends section 18 of the Federal Deposit Insurance Act to permit (but not require) a bank to include information, in a response to a request for an employment reference by a second bank, about the possible involvement of a former institution-affiliated party in potentially unlawful activity. A bank that provides information to a

second bank under the terms of this amendment is protected from civil liability arising from the provision of the information unless the first bank acts with malicious intent.

Section 356. Reporting of suspicious activities by securities brokers and dealers; investment company study

Section 356(a) directs the Secretary of the Treasury, after consultation with the Securities and Exchange Commission and the Federal Reserve Board, to publish proposed regulations, on or before **January 1, 2002**, and final regulations on or before **July 1, 2002**, requiring broker-dealers to file suspicious activity reports.

Section 356(b) authorizes the Secretary of the Treasury, in consultation with the Commodity Futures Trading Commission, to prescribe regulations requiring futures commission merchants, commodity trading advisors, and certain commodity pool operators to submit suspicious activity reports under 31 U.S.C. 5318(g). To a significant extent, the authorization clarifies and restates the terms of existing law, but it also signals concern that the Treasury is to move quickly to determine the extent to which suspicious transaction reporting by commodities firms is necessary as a part of the nation's anti-money laundering programs.

Section 356(c) requires the Secretary of the Treasury, the SEC and Federal Reserve Board to submit jointly to Congress, within one year of the date of enactment (**October 26, 2002**), recommendations for effective regulations to apply the provisions of 31 U.S.C. 5311-30 to both registered and unregistered investment companies, as well as recommendations as to whether the Secretary should promulgate regulations treating personal holding companies as financial institutions that must disclose their beneficial owners when opening accounts or initiating funds transfers at any domestic financial institution.

Section 357. Special report on administration of Bank Secrecy provisions

Section 357 directs the Secretary of the Treasury to submit a report to Congress, six months after the date of enactment (**April 2002**), on the role of the Internal Revenue Service in the administration of the Bank Secrecy Act, with emphasis on whether IRS Bank Secrecy Act information processing responsibility (for reports filed by all financial institutions) or Bank Secrecy Act audit and examination responsibility (for certain non-bank financial institutions) should be retained or transferred.

Section 358. Bank Secrecy provisions and anti-terrorist activities of the United States intelligence agencies

Section 358 contains amendments to various provisions of the Bank Secrecy Act, the Right to Financial Privacy Act, and the Fair Credit Reporting Act, to permit information to be used in the conduct of United States intelligence or counterintelligence activities to protect against international terrorism.

Section 359. Reporting of suspicious activities by underground banking systems

Section 359 amends various provisions of the Bank Secrecy Act to clarify that the Bank Secrecy Act treats certain underground banking systems as financial institutions, and that the funds transfer recordkeeping rules applicable to licensed money transmitters also apply to such underground systems. Section 359 also directs the Secretary of the Treasury to report to Congress, within one year of the date of enactment (**October 26, 2002**), on the need for additional legislation or regulatory controls relating to underground banking systems.

Section 360. Use of authority of the United States Executive Directors.

Section 360 authorizes the Secretary of the Treasury to instruct the United States Executive Director of each of the international financial institutions (for example, the IMF and the World Bank) to use such Director's "voice and vote" to support loans and other use of resources to benefit nations that the President determines to be contributing to United States efforts to combat international terrorism, and to require the auditing of each international financial institution to ensure that funds are not paid to persons engaged in or supporting terrorism.

Section 361. Financial Crimes Enforcement Network.

Section 361 adds a new section 310 to Subchapter I of chapter 3 of title 31, United States Code, to make the Financial Crimes Enforcement Network ("FinCEN") a bureau within the Department of the Treasury, to specify the duties of FinCEN's Director, and to require the Secretary of the Treasury to establish operating procedures for the government-wide data access service and communications center that FinCEN maintains. Section 361 also authorizes appropriations for FinCEN for fiscal years 2002 through 2005. Finally, Section 361 requires the Secretary to study methods for improving compliance with the reporting requirements for ownership of foreign bank and brokerage accounts by U.S. nationals imposed by regulations issued under 31 U.S.C. 5314; the required report is to be submitted within six months of the date of enactment (**April 2002**) and annually thereafter.

Section 362. Establishment of highly secure network.

Section 362 directs the Secretary of the Treasury to establish, within nine months of enactment (**July 2002**), a secure network with FinCEN that will allow financial institutions to file suspicious activity reports and provide such institutions with information regarding suspicious activities warranting special scrutiny.

Section 363. Increase in civil and criminal penalties for money laundering.

Section 363 increases from \$100,000 to \$1,000,000 the maximum civil and criminal penalties for a violation of provisions added to the Bank Secrecy Act by sections 311, 312 and 313 of this Act.

Section 364. Uniform protection authority for Federal Reserve facilities.

Section 364 authorizes certain Federal Reserve personnel to act as law enforcement officers and carry firearms to protect and safeguard Federal Reserve employees and premises.

Section 365. Reports relating to coins and currency received in nonfinancial trade or business.

Section 365 adds 31 U.S.C. 5331 (and makes related and conforming changes) to the Bank Secrecy Act to require any person who receives more than \$10,000 in coins or currency, in one transaction or two or more related transactions in the course of that person's trade or business, to file a report with respect to such transaction with FinCEN; regulations implementing the new reporting requirement are to be promulgated (**April 2002**) within six months of enactment.

Section 366. Efficient use of current transaction report system.

Section 366 requires the Secretary of the Treasury to report to the Congress (**October 2002**) before the end of the one year period beginning on the date of enactment containing the results of a study of the possible expansion of the statutory system for exempting transactions from the currency transaction reporting requirements and ways to improve the use by financial institutions of the statutory exemption system as a way of reducing the volume of unneeded currency transaction reports.

SUBTITLE C. CURRENCY CRIMES

Section 371. Bulk cash smuggling.

Section 371 creates a new Bank Secrecy Act offense, 31 U.S.C. 5332, involving the bulk smuggling of more than \$10,000 in currency in any conveyance, article of luggage or merchandise or container, either into or out of the United States, and related forfeiture provisions.

Section 372. Forfeiture in currency reporting cases.

Section 372 amends 31 U.S.C. 5317 to permit confiscation of funds in connection with currency reporting violations consistent with existing civil and criminal forfeiture procedures.

Section 373. Illegal money transmitting business.

Section 373 amends 18 U.S.C. 1960 to clarify the terms of the offense stated in that provision, relating to knowing operation of an unlicensed (under state law) or unregistered (under federal law) money transmission business. Section 373 also amends 18 U.S.C. 981(a) to authorize the seizure of funds involved in a violation of 18 U.S.C. 1960.

Section 374. Counterfeiting domestic currency and obligations.

Section 374 makes a number of changes to the provisions of 18 U.S.C. 470-473 relating to the maximum sentences for various counterfeiting offenses, and adds to the definition of counterfeiting in 18 U.S.C. 474 the making, acquiring, etc. of an analog, digital, or electronic image of any obligation or other security of the United States.

Section 375. Counterfeiting foreign currency and obligations.

Section 375 makes a number of changes to the provisions of 18 U.S.C. 478-480 relating to the maximum sentences for various counterfeiting offenses involving foreign obligations or securities and adds to the definition of counterfeiting in 18 U.S.C. 481 the making, acquiring, etc. of an analog, digital, or electronic image of any obligation or other security of a foreign government.

Section 376. Laundering the proceeds of terrorism.

Section 376 amends 18 U.S.C. 1956 to add the provision of support to designated foreign terrorist organizations to the list of crimes that constitute ``specified unlawful activities" for purposes of the criminal money laundering statute. (This provision was originally included in another title of the terrorism legislation.)

Section 377. Extraterritorial jurisdiction.

Section 377 amends 18 U.S.C. 1029 to vest United States authorities with extraterritorial jurisdiction over acts involving access device, credit card and similar frauds that would be crimes if committed within the United States and that are directed at U.S. entities or linked to U.S. activities.